United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 15-1935**
	)	**Issued: January 27, 2016**
DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION, Santa Fe, NM, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 28, 2015 appellant filed a timely appeal from an August 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to a March 5, 2015 employment incident.

FACTUAL HISTORY

On March 9, 2015 appellant then a 62-year-old cemetery caretaker, filed a traumatic injury claim (Form CA-1) alleging that on March 5, 2015, after verifying a gravesite, he slipped

[1] 5 U.S.C. § 8101 *et seq.*

on an incline and injured his left knee, foot, and ligament while in the performance of duty. The employing establishment checked the box "yes" in response to whether appellant was in the performance of duty and whether the facts about the injury agreed with the statements of the employee and or witnesses. Appellant did not stop work.

OWCP received treatment notes from Robin Wallace, D.O.M., who provided acupuncture treatment, a physician assistant, and a physical therapist.

By letter dated July 16, 2015, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and appellant's claim was administratively handled to allow limited medical payments. However, appellant's claim was being reopened as medical bills had exceeded $1,500.00. OWCP informed him of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It also informed appellant that the medical evidence must be submitted or countersigned by a qualified physician and explained that physician assistants and nurses did not qualify as physicians.

Appellant provided an April 30, 2015 left knee x-ray from Dr. Karen Koolpe, a Board-certified diagnostic radiologist, who advised that two views of the left knee showed no evidence of fracture or dislocation. A May 6, 2015 x-ray of the lumbar spine read by Dr. Regina Valencia, a Board-certified radiologist, revealed mild disc space narrowing at L4-5 and L5-S1 with anterior osteophytes. There was no compression fracture or subluxation. Dr. Valencia advised that the sacroiliac joints and hip joints were symmetric. Appellant also submitted additional evidence from a physician assistant and Ms. Wallace, some of which were previously of record.

In an August 11, 2015 statement, appellant related that the immediate effects of his injury were that he felt a pain in the knee and he took Ibuprofen and ice for the pain. He denied any history of disability or symptoms prior to the injury. Accompanying appellant's statement was an undated statement from James P. Sanders, the director of the cemetery where appellant worked, who noted that appellant informed him that he had injured his knee on March 5, 2015 and he was in obvious pain.

In an undated report received on August 14, 2015, Dr. John E. Ward, a Board-certified family practitioner, noted that appellant received treatment over the period March 10 to June 5, 2015. He explained that on the initial visit of March 10, 2015, appellant reported that he was walking at work on March 5, 2015, when he stumbled and hyperextended his left knee with acute pain. Dr. Ward related that his examination revealed a left knee sprain. He summarized appellant's treatment regimen and explained that on June 5, 2015 appellant was improved and released from care.

By decision dated August 24, 2015, OWCP denied appellant's claim. It found that he did not submit medical evidence establishing that the claimed work event caused a diagnosed medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS

In this case, appellant alleged that on March 5, 2015 he slipped on the incline while visiting a gravesite while in the performance of duty. OWCP accepted that the claimed event occurred as alleged, but denied the claim because the medical evidence did not demonstrate a claimed condition was related to this established work event.

The Board finds that appellant has not established a medical condition causally related to the accepted employment incident.

The most relevant report is the undated report, received on August 14, 2015 from Dr. Ward, who noted appellant's history of injury and reviewed his treatment history. He noted that appellant reported he was walking at work on March 5, 2015, when he stumbled and hyperextended his left knee with acute pain. Dr. Ward diagnosed a left knee sprain and advised that on June 5, 2015 appellant was improved and released from care. However, he did not

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*.

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

clearly indicate his own opinion that the work incident caused or aggravated a diagnosed condition. Dr. Ward's report is of limited probative value as he did not provide medical rationale addressing how a particular work activity caused or contributed to a diagnosed medical condition.[8]

OWCP also received April 30 and May 6, 2015 x-ray reports from Drs. Valencia and Koolpe. However, these reports are also of limited probative value as they do not address whether the March 5, 2015 work incident caused or aggravated a diagnosed medical condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

OWCP received numerous reports from Ms. Wallace who performed acupuncture, a physician assistant, and a physical therapist. Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.[10] Only medical evidence from a physician as defined by FECA will be accorded probative value. Health care providers such as nurses, acupuncturists, physician assistants, and physical therapists are not physicians under FECA. Thus, their reports and opinions on causal relationship have no medical weight or probative value and are insufficient to establish the claim.[11]

As appellant did not submit a rationalized medical opinion supporting that he sustained an illness or an injury causally related to the accepted March 5, 2015 employment incident, he did not meet his burden of proof to establish an employment-related traumatic injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to a March 5, 2015 employment incident.

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[10] 5 U.S.C. § 8101(2).

[11] *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist); *Nemat M. Amer*, Docket No. 03-338 (issued April 7, 2003) (acupuncturist).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board